

In the United States District Court
for the Northern District of Texas
Dallas Division

Angela Police,

Plaintiff,

v.

Howard Mayfield and PCC
Refrigerated Express Inc. d/b/a
PCC Transportation,
Defendant.

Civil Action No.3:17-cv-635

Jury Demanded

**Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation's
Notice of Removal and Demand for Jury Trial**

To the Honorable United States District Judge:

Comes now, Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation, and files this its *Notice of Removal and Demand for Jury Trial*. In support, the following is provided:

Introduction

Plaintiff Angela Police filed her state court action against defendants in Dallas County, Texas on December 7, 2016.¹ The case was docketed as Cause No. DC-16-15641; *Angela Police v. Howard Mayfield and PCC Refrigerated Express Inc. d/b/a PCC Transportation*; in the 160th Judicial District Court of Dallas County, Texas. Plaintiff's claims against defendant sound in negligence.²

This claim relates to a motor vehicle accident occurring on or about December 13, 2014 in Dallas, Texas. Plaintiff alleges Defendant Howard Mayfield was driving a truck owned, leased, or otherwise under the control of defendant's employer, Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation, when the truck collided with her vehicle on Interstate 20. Plaintiff seeks damages for past and future reasonable medical care and expenses, past and future physical pain and suffering, past and future physical impairment, and past and future mental

¹ See Exhibit C-1, Plaintiff's Original Petition.

² *Id.* at ¶¶ 8 - 11.

anguish. Plaintiff claims damages in excess of \$100,000.00, but not more than \$200,000.00.³

On or about February 16, 2017, Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation received a copy of Plaintiff's First Amended Petition, the operative pleading, and citation.⁴ On February 27, 2017, Defendant filed its Original Answer in the State Court Action, and demanded a jury trial.⁵

Defendant's Notice of Removal is timely as it was filed within thirty (30) days of when defendant was served.⁶ Defendant's Notice of Removal is timely as it is filed within thirty (30) days of when it was first ascertainable that this case could be removed based upon diversity jurisdiction.⁷ The one year deadline on removal under 28 U.S.C. 1446(c) has not elapsed.

The Parties

Plaintiff, Angela Police, is an individual residing in Dallas, Dallas County, Texas.⁸

Defendant, Howard Mayfield, is an individual residing in Columbus, Franklin County, Ohio.⁹

Defendant, PCC Refrigerated Express Inc. d/b/a PCC Transportation, is foreign corporation incorporated under the laws of the State of Ohio, with its principal place of business in Columbus, Franklin County, Ohio.¹⁰

Basis for Removal

a. Standard for Removal

Pursuant to 28 U.S.C § 1441, defendant removes this action to the United States Northern District Court-Dallas Division. In support of this Notice, defendant

³ *Id.* at ¶ 1.

⁴ See Exhibit C-8, Return of Service; *see also* Exhibit C-6, Plaintiff's First Amended Petition.

⁵ See Exhibit C-9, Defendant PCC Refrigerated Express d/b/a PCC Transportation's Original Answer.

⁶ See 28 U.S.C. 1446(b)(1).

⁷ See 28 U.S.C. 1446(b)(3).

⁸ Ex. C-6 at ¶ 2.

⁹ *Id.* at ¶ 3.

¹⁰ *Id.* at ¶ 4.

shows that there is complete diversity of citizenship between plaintiff and defendants because plaintiff and defendants are citizens of different states, and the amount in controversy exceeds \$75,000.00. Removal is appropriate because it has been sought within thirty (30) days of defendant first ascertaining that this suit was removable, and it has been less than one year since this action was originally commenced.¹¹

b. *Diversity of Citizenship*

Diversity jurisdiction depends upon a showing of complete diversity, which means that none of the plaintiffs may be a citizen of the same state as one of the defendants.¹² A corporate entity is deemed to be a citizen of both the foreign state in which it is incorporated as well as the location where it maintains its principal place of business.¹³

As of the date of filing of this action, and at all times thereafter, up to and including the present, Plaintiff Angela Police was a citizen of the State of Texas.¹⁴ Defendant Howard Mayfield is a citizen of the State of Ohio.¹⁵ Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation is a corporation incorporated in the State of Ohio, with its principal place of business in Columbus, Ohio.¹⁶ Accordingly, complete diversity of citizenship exists between plaintiff and defendants.

c. *Amount in Controversy*

Removal is additionally appropriate under diversity jurisdiction as the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

¹¹ See 28 U.S.C. § 1446(b); see also *McCrary v. Kan. City S. RR.*, 121 F. Supp.2d 566, 570 (E.D. Tex. 2000) (“[T]he removal period does not begin to run until the out of state defendant actually is served and not when the Secretary of State receives the process.”); see also *Monterey Mushrooms, Inc. v. Hall*, 14 F. Supp.2d 988, 991 (S.D. Tex. 1998) (when service is effected on a statutory agent, the removal period begins when the defendant actually receives the process, not when the statutory agent receives process.”).

¹² See *Whalen v. Carter*, 954 F.2d 1087, 1974 (5th Cir. 1992).

¹³ See 28 U.S.C. § 1332(c)(1); *Mullins v. Test America, Inc.*, 564 F.3d 386, 397 n.6 (5th Cir. 2009).

¹⁴ Ex. C-6 at ¶ 2.

¹⁵ *Id.* at ¶ 3.

¹⁶ *Id.* at ¶ 4.

Plaintiff's First Amended Original Petition specifically alleges that "Plaintiff seeks monetary relief over \$100,000.00 but not more than \$200,000.00."¹⁷

FRCP Rule 38 Jury Demand

A jury trial is demanded on all issues presented in this case.

Required Documents

Pursuant to 28 U.S.C § 1446(a), defendant attaches hereto copies of all pleadings, process, orders, and other filings in the State Court Action as well as the State Court Action's docket sheet. The pleadings, process, orders, other filings, and docket sheet from the State Court Action are identified in the Index of Matters Being Filed with Removal which appears as Exhibit A.¹⁸

Required Notice

Pursuant to 28 U.S.C. § 1446(d), defendant will promptly provide notice to all adverse parties and will file a copy of the Notice of Removal with the Dallas County District Clerk's Office.

Conclusion

Wherefore, premises considered, Defendant PCC Refrigerated Express Inc. d/b/a PCC Transportation, respectfully requests that the Honorable Court remove this action to the United States District Court for the Northern District of Texas. Defendant additionally prays for such further relief, at either law or equity, to which it may prove itself justly entitled.

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¹⁷ *Id.* at ¶ 1.

¹⁸ *See also* Exs. B-E, attached hereto.

Respectfully submitted,

/s/Michael D. Williams

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Certificate of Service

This is to certify that a true and correct copy of the foregoing document, was electronically filed with the Court and served in accordance with the Federal Rules of Civil Procedure as well as the Northern District of Texas' Local Rules via electronic filing as well as facsimile and certified mail, return receipt requested on March 3, 2017.

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